

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Douglas Miller, Chair
Heather Anderson, ADR Subcommittee Counsel, 415-865-7691
heather.Anderson@jud.ca.gov.

DATE: August 22, 2002

SUBJECT: Alternative Dispute Resolution: Petition to Confirm, Correct or
Vacate Binding Attorney-Client Fee Arbitration Award or Request
Trial De Novo in Pending Action After Non-Binding Award
approve form ADR-103) (Action Required)

Issue Statement

Currently, there is a Judicial Council form, SC-101, that parties in small claims proceeding can use to request confirmation, correction, or vacatur of a binding attorney-client fee arbitration award or to reject a nonbinding award and request a trial, but there is no Judicial Council form for making such requests outside of small claims court. Parties in non-small claims proceedings must therefore draft their own requests, making it more difficult for pro per litigants to pursue these post-fee arbitration actions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2003, approve new form ADR-103 *Petition to Confirm, Correct or Vacate Binding Attorney-Client Fee Arbitration Award or Request Trial De Novo in Pending Action After Non-Binding Award* for optional use in non small claims court proceedings.

Rationale for Recommendation

The State Bar of California's Committee on Mandatory Fee Arbitration has asked the Judicial Council to consider the adoption of forms for parties to request that a

binding attorney-client fee arbitration award be confirmed, corrected, or vacated or to request a trial de novo following a nonbinding award. The Committee requested these forms to assist pro per litigants in pursuing post-attorney-client fee arbitration actions.

California statutes establish an arbitration program for attorney-client fee disputes (Bus. & Prof. Code, § 6200 et seq.). Under these statutory provisions, an arbitration award is nonbinding unless (1) the parties agree to be bound by the award, or (2) no party requests a trial within 30 days following the issuance of a nonbinding award (Bus. & Prof. Code, §§ 6203(b) and 6204(a)).

If the award is nonbinding, parties are entitled to a trial after the arbitration as long as the trial is requested within 30 days after the mailing of notice of the arbitrator's award (Bus. & Prof. Code, § 6204(a) and (b)). If an action is already pending, a party can request a trial by filing a rejection of the arbitration award and a request for a trial in the pending action (Bus. & Prof. Code, § 6204(b)). If no action is pending, a party initiates trial by commencing an action in the court having jurisdiction over the amount in controversy (Bus. & Prof. Code, § 6204(c)). If the award is binding, parties may request that a court confirm, correct, or vacate the award in the same manner as that for contractual arbitration awards under Code of Civil Procedure section 1285 et. seq. (Bus. & Prof. Code, § 6203(b)).

There is already a Judicial Council form, SC-101, that parties in small claims proceeding can attach to the claim form, SC-100, to request confirmation, correction, or vacatur of a binding attorney-client fee arbitration award or to reject a nonbinding award and request a trial. However, currently there is no Judicial Council form for making such requests outside of small claims court, so each party must draft his or her own request. This makes it difficult for pro per litigants to pursue these post-fee arbitration actions.

Form ADR-103 would provide an optional, standardized mechanism by which litigants in superior court could request that a binding attorney-client fee arbitration award be confirmed, corrected, or vacated or, where an action is already pending, to request a trial de novo following a nonbinding award. The accompanying form ADR 103A will provide parties with information about their rights following an attorney-client fee arbitration to assist them in completing form ADR 103. Both the form and accompanying information sheet are based in large part on form SC-101.

Alternative Actions Considered

The committee considered developing separate forms for requesting confirmation, correction, vacatur of the award and requesting a trial de novo, but determined that

a single form would be easier for pro per litigants. The committee also considered including the instructions as part of ADR-103, but decided to recommend that they be in a separate form ADR-103A in order to avoid the necessity of these extra pages being filed with the court. After circulation for comment, the committee did decide, however, to move the lists of the grounds for correction or vacatur out of the instruction sheet and into the form itself, in order to make the form easier to understand and use.

Comments From Interested Parties

The form was circulated for comment this spring. We received a total of 14 responses to the invitation to comment. Twelve commentators supported the proposal without comment and two indicated they would support the proposal only if amended. A chart listing all of the comments is attached beginning on page 8.

In response to these comments, the committee: 1) revised the “Notice” box to clarify that SC 100 and SC 101 are the correct forms to use in a small claims action; and 2) deleted a second signature line that was on the form as circulated for comment.

Implementation Requirements and Costs

This form should save litigants the time and expense of inventing individualized requests and should assist the court in processing these requests. There should be no appreciable costs for the courts.

NOTICE: Please read *Information Regarding Rights After Attorney-Client Fee Arbitration* (form ADR-103A) before completing this form. You cannot use this form if (1) the attorney-client fee arbitration award is not binding, and (2) no lawsuit has been filed in court concerning the attorney fees that are in dispute. If no lawsuit has been filed and you do not want the attorney-client fee arbitration award to become binding, you must file your own action in the proper court within 30 days after the notice of arbitration award was mailed to you. If you do not file an action within 30 days, the arbitration award will become binding, and you only will be able to request that the court correct, confirm, or vacate the award.

Do not use this form in a small claims action. Use forms SC-100 and SC-101.

1. **Petitioner (name):**
(representative capacity, if any):
2. **Respondent (name):**
(address):
3. **Date of attorney-client fee arbitration.** On or about (date): ____/____/____, petitioner and respondent entered into arbitration pursuant to Business and Professions Code sections 6200–6206 for determination of disputed attorney fees.
4. **Parties.** At the arbitration hearing, petitioner was ☐ attorney ☐ client
5. **Date of notice of arbitration award.** Notice of the arbitration award was mailed to petitioner on (date): ____/____/____.
6. **Arbitration award.** The award made after the arbitration hearing
 - a. ☐ requires the ☐ attorney ☐ client to pay the other party this amount \$
 - b. ☐ requires neither the attorney nor the client to pay the other anything.
7. **Amount in dispute.** The amount of fees and costs in dispute is: \$

PETITIONER:	CASE NUMBER:
RESPONDENT:	

8. ☐ **Binding award**

a. The award made after the arbitration hearing was binding because *(check at least one box)*:

- (1) ☐ The attorney and client agreed in writing to have binding arbitration. *(Attach a copy of this agreement.)*
 (2) ☐ More than 30 days have passed since the award document was mailed and no request for a trial has been filed.

b. **Petitioner's request**

I request that the court:

(1) ☐ *(Correct award)* Correct the award as follows:

(i) Reason award should be corrected *(please select one of the following)*:

- A. ☐ The amount of award was not calculated correctly or a person, thing, or property was not described correctly.
 B. ☐ The arbitrators exceeded their authority.
 C. ☐ The award is imperfect as a matter of form.

(ii) Correction requested *(specify)*:

(2) ☐ *(Vacate award)* Vacate (cancel) the award as follows:

(i) Reason award should be vacated *(please select one of the following)*:

- A. ☐ The award was obtained by corruption, fraud, or other unfair means.
 B. ☐ One or more of the arbitrators was corrupt.
 C. ☐ The misconduct of a neutral arbitrator substantially prejudiced my rights.
 D. ☐ The arbitrators exceeded their authority and the award cannot be fairly corrected.
 E. ☐ The arbitrators unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.
 F. ☐ An arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
 G. ☐ An arbitrator should have disqualified himself or herself after I made a demand to do so.

(ii) Explain the circumstances *(specify)*:

(iii) I ☐ do ☐ do not request a new arbitration hearing.

(3) ☐ *(Confirm award)* Confirm the award.

9. ☐ **Nonbinding award**

a. The award made after the arbitration was **not** binding because the attorney and client did **not** agree in writing after the dispute arose to have binding arbitration, and 30 days have **not** passed since the award document was mailed.

b. **Pending Action.** A court action (case) involving this attorney-client fee dispute is pending.

(Your request for a trial must be filed in the court where that action is pending under the same case number.)

c. **Appearance at arbitration.**

(1) ☐ I appeared at the arbitration hearing.

(2) ☐ I did not appear at the arbitration, but the award does not contain a finding that my failure to appear was willful.

d. **Petitioner's request**

☐ I reject the arbitration award and request a **trial** ("hearing de novo") in court to resolve the fee dispute.

(NOTE: Do not check this box unless you also checked item 9, "Nonbinding award," above.)

10. ☐ **Copy of award.** A copy of the arbitration award is attached.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER OR ATTORNEY)

**INFORMATION REGARDING RIGHTS AFTER
ATTORNEY-CLIENT FEE ARBITRATION**

DRAFT-6

1. RIGHTS AFTER NONBINDING ARBITRATION

A. What are my rights if I am not satisfied with a nonbinding attorney-client fee arbitration award?

If the arbitration award is nonbinding, you may have a right to a trial in court. If you did not appear at your fee arbitration hearing, however, you will have to prove to the court that you had a good reason for not being there. If a court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration. If you want a trial in court, you should follow the instructions below to protect your rights.

B. What must I do to get a trial in court?

You must file papers in the proper court within the required time limit.

C. How long do I have to act?

If you want a trial in court, you must file your papers in court within 30 days after the date the arbitration award was mailed to you. The date the arbitration award was mailed is written at the end of the notice you received.

D. What papers must I file? In what court must I file them?

That depends. Has a lawsuit about the fees already been filed?

(1) **YES—lawsuit already filed**

If a lawsuit about the fees has already been filed, then you must file a request for a trial in the same court where the lawsuit was filed, under the same case number as the lawsuit that is pending. If the lawsuit is in small claims court, you can use Judicial Council forms SC-100 and SC-101 to request a trial. If the lawsuit is in superior court, you can use form ADR-103 to request a trial after a nonbinding attorney-client fee arbitration; see box 9d on page 2 of form ADR-103.

(2) **NO—lawsuit not yet filed**

If no lawsuit about the fees has been filed, then you must file your own action in the proper court if you do not want the arbitration award to become binding. You may file your action in small claims court if the amount in dispute is \$5,000 or less. You can use Judicial Council forms SC-100 and SC-101 to file an action in small claims court. If the amount in dispute is more than \$5,000, the superior court is the proper court in which to file your action. You may need a lawyer's help to file an action in superior court. You cannot use form ADR-103 to file such an action.

E. What if I am satisfied with the award?

If you are satisfied with the nonbinding award, do nothing until the award becomes binding or the other party requests a trial. The award will become binding if the other party does not file papers requesting a trial in court within the 30-day limit.

F. What are my rights if the award becomes binding? Read item 2 below.

2. RIGHTS AFTER BINDING ARBITRATION

A. What are my rights if I am not satisfied with a binding attorney-client fee arbitration award?

If the arbitration award is binding, in most cases you must obey it. There is no appeal from a binding award. A court has the power to "vacate" (cancel) an arbitration award, but only for the following narrow reasons:

- (1) The award was obtained by corruption, fraud, or other unfair means.
- (2) One or more of the arbitrators was corrupt.
- (3) The misconduct of a neutral arbitrator substantially prejudiced your rights.
- (4) The arbitrators exceeded their authority and the award cannot be fairly corrected.
- (5) The arbitrators unfairly refused to postpone the hearing or to hear evidence useful to settling the dispute.
- (6) An arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
- (7) An arbitrator should have disqualified himself or herself after you made a demand to do so.

A court can also correct the following types of obvious mistakes in the award:

- (1) The amount of award was not calculated correctly, or a person, a thing, or property was not described correctly.
- (2) The arbitrators exceeded their authority.
- (3) The award is imperfect as a matter of form.

If you think you are entitled to correct or vacate the arbitration award, please follow the instructions below to protect your rights.

B. What must I do to vacate or correct the binding arbitration award?

You must file a petition in the proper court within the required time limit.

C. How long do I have to act?

If you want to correct or vacate the binding award, you must file your petition within 100 days after the date the arbitration award was mailed to you. The date the award was mailed is at the end of the notice mailed with the award.

If, however, you receive notice from a court that the other side has filed a petition to confirm the award, you no longer have 100 days to file your petition. You must then respond by filing your petition to vacate or correct the award within the time stated on the notice from the court.

D. In what court do I file my petition?

That depends. Has a lawsuit about the fees already been filed?

(1) **YES—lawsuit already filed**

If a lawsuit about the fees has already been filed, you will file your petition to vacate or correct with the same court where the lawsuit was filed, under the same case number as the lawsuit that is pending.

(2) **NO—lawsuit not yet filed**

If no lawsuit about the fees has been filed, then you will file your petition with the court that has jurisdiction over the amount of the arbitration award. If the amount of the arbitration award is \$5,000 or less, you may file your petition in small claims court. For awards over \$5,000, the superior court is the proper court.

E. What is a petition?

A petition is a technical legal document that tells the court what you want and why you are entitled to it.

You can use form ADR-103 to file a petition in superior court to correct or vacate a binding attorney-client fee arbitration award; see boxes 8b(1) and (2) on page 2 of form ADR-103. You can use Judicial Council forms SC-100 and SC-101 to file a petition in small claims court.

F. What if I am satisfied with the binding arbitration award?

If the arbitration award indicates or says that you owe money and you do not intend to petition to have the award corrected or vacated (canceled), you should pay the amount that you owe. If you do not pay it, the other party has a right to get court orders allowing him or her to collect the debt by taking and selling your property and by taking money from your paycheck and bank account.

If the arbitration award says that you are owed money, you should write the other party a letter and demand payment. If you are not paid, you can seek to enforce the arbitration award. See section G below.

G. How can binding attorney-client fee arbitration awards be enforced?

There are two procedures for enforcing binding attorney-client fee arbitration awards.

If you are the client, you have the right to ask the State Bar to assist you in enforcing the arbitration award if the following is true:

(1) Your arbitration request was filed on or after January 1, 1994; and

(2) (a) 100 days have passed from service of the award and the award is binding, or

(b) The award has become a final judgment after a trial following arbitration or after a petition to vacate, correct, or confirm the award.

You can contact the State Bar and request the form *Request for Enforcement of an Award* at:

**Mandatory Fee Arbitration
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639
415-538-2020**

Any party who is owed money also has the right to request court orders allowing him or her to take property or money from the other party's paycheck and bank accounts. To get those court orders based on an attorney-client fee arbitration award, however, you must first make the arbitration award a judgment of the court. To do this, you must confirm the arbitration award in court.

(1) *What must I do to confirm the arbitration award?*

To confirm the arbitration award, you must file a petition for confirmation with the proper court within the required time limit.

(2) *How long do I have to act?*

You must file your petition for confirmation within four years after the date the arbitration award was mailed to you. That date appears at the end of the notice mailed with the award.

(3) *In what court do I have to file my petition?*

That depends on the amount owed. If it is \$5,000 or less, you may file in small claims court. If the amount owed is more than \$5,000, the superior court is the proper court in which to file your petition.

(4) *What is a petition for confirmation?*

A petition is a legal document that tells the court what you want and why you are entitled to it. You can use form ADR-103 to file a petition to confirm a binding attorney-client fee arbitration award in superior court; see box 8b(3) on page 2 of ADR-103. You can use Judicial Council forms SC-100 and SC-101 to file a petition to confirm such an award in small claims court.

(5) *What are my rights after the arbitration award is confirmed?*

When the arbitration award is confirmed, it becomes a judgment of the court. Once you have a judgment, you have a right to enforce the judgment. That means you can get court orders allowing you to collect your money. Enforcing judgments can be very technical and very complicated. The court has forms to use for this procedure.

Comments for SPR02-07
Petition to Confirm, Correct or Vacate Binding Attorney-Client Fee
Arbitration Award or Request Trial De Novo in Pending Action After Non-Binding Award

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Ronald L. Bauer Chair Rules and Forms Committee Superior Court of Orange County	A	Y	It is recommended that Items 1.D(1) AND 2D(1) be revised to reflect that the pleading should be filed not only in the court but <i>in the case</i> already pending.	Agree. Form has been revised as suggested.
2.	Joseph E. Berberich Attorney Manning, Leaver, Bruder & Berberich	AM	N	If this petition was filed in the small claims court, would it be attached to the SC-100, or would it be the first document filed in the small claims court? If it is the first document filed, it would mean there would have to be a change in the small claims court statutes to allow for this. If it is to be attached to the SC-100, the SC-100 would have to be modified from its present language regarding attorney-client fee arbitration. Would the current attorney-client fee arbitration form which is not to be attached to SC-100 be obsolete?	The intent in developing this form was not to supplant the existing small claims court form (SC-101), but to provide a form that could be used in superior court cases. The "Notice" has been amended to clarify that SC-100 and SC-101 are the correct forms to use in a small claims action.
3.	Julie Bronson Administrator Superior Court of Los Angeles County	A	N	I concur with the proposed form and would like to indicate support. Since the court is responsible for processing this form, it will also assist the court to have a standard form.	No response necessary.
4.	Michael Coughlin University of California Police/Davis	A	N	No comment.	No response necessary.
5.	Sandra Mason Director of Civil Operations	A	N	No comment.	No response necessary.
6.	Andrea Nelson Superior Court of Butte County	A	N	No comment.	No response necessary.
7.	Lenor R. Noll	AM	N	I assume spacing in some areas will be corrected.	Spacing errors have been corrected.

Comments for SPR02-07
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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Deputy Court Executive Officer Superior Court of Monterey County				
8.	Hon. Harry R. Sheppard Superior Court of Alameda County	A	N	No comment.	No response necessary.
9.	Lee Silva-Combs Deputy Court Executive Officer Superior Court of Monterey County	A	N	No comment.	No response necessary.
10.	Elizabeth Strickland Superior Court of Santa Clara County	A	N	The form will be helpful to pro per clients and save time and frustration.	No response necessary.
11.	Denise M. Trerotola Superior Court of Ventura County	A	N	There appears to be some ambiguity regarding the form having two (2) signature lines. What is the purpose of the two (2) signature lines?	Agree. The form has been amended to delete the second line.
12.	Unknown Superior Court of Ventura County	A	N	No comment.	No response necessary.
13.	Richard K. Uno Managing Attorney Human Rights/Fair Housing Commission	A	N	No comment.	No response necessary.
14.	Joe Yniquez Supervisor I Superior Court of Stanislaus County	A	N	No comment.	No response necessary.

Comments for SPR02-07
Petition to Confirm, Correct or Vacate Binding Attorney-Client Fee
Arbitration Award or Request Trial De Novo in Pending Action After Non-Binding Award

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
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